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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 JOSE VERA,

12 Plaintiff,

1:17-cv-03005-RMP

13 vs.

14 U.S. DEPARTMENT OF INTERIOR
15 BUREAU OF INDIAN AFFAIRS, and
16 the UNITED STATES OF AMERICA,

STATEMENT OF MATERIAL FACT
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

17 Defendants.

18 Defendant, United States of America, by and through its counsel of record,
19 Joseph H. Harrington, United States Attorney for the Eastern District of Washington,
20 and the undersigned Assistant United States Attorney, pursuant to Local Civil Rule
21 56(c)(1)(A), hereby submits its Statement of Material Facts Not in Dispute in support
22 of its Motion for Summary Judgment.

23 **BACKGROUND ON THE CLOSED AREA OF THE**
24 **YAKAMA RESERVATION**

25 1. The Closed Area of the Yakama Indian Reservation, which makes up about 2/3
26 of the 1.3 million acre reservation, has been closed to the general public since 1972.
27 *Brendale v. Confederated Tribes and Bands of the Yakama Indian Nation*, 492 U.S.
28 408, 415 (1989).

2. In 1990, the Yakama Nation passed a tribal resolution that confirmed its
prior closure of a large part of the Yakama Indian Reservation. *First Declaration of*
Kurt Fredenberg, Ex. 2 (Tribal Resolution T-166-90) (ECF No. 5-2).

1 3. In that resolution, the Yakama Nation took over access to the Close Area
2 and took control of roads within the Closed Area by placing a moratorium on “the use
3 of BIA funds for construction, operation and maintenance of roads within the Closed
4 Area of the Yakama Indian Reservation.” *Id.*, Ex. 2.

5 4. In 1991, the Yakama Nation passed another resolution (T-113-91) whereby
6 the Yakama Nation accepted the BIA’s relinquishment of all BIA rights of way and
7 easements over roads and bridges in the Closed Area of the Yakama Indian
8 Reservation. *First Fredenberg Decl.*, Ex. 3.

9 5. Thus, the portion of the Signal Peak Road in the Closed Area of the Yakama
10 Indian Reservation became the sole responsibility of the Yakama Nation.

11 6. The Yakama Nation passed another resolution (T-190-96) which stated that
12 only non-federal, unrestricted Tribal funds were being expended on roads in the
13 Closed Area. *First Fredenberg Decl.*, Ex. 4.

14 7. That resolution allowed Federal funds available to the BIA to be spent on the
15 eastern portion of Signal Peak Road (approximately 12 miles) in the Open Area of the
16 Yakama Indian Reservation. *Id.*, ¶ 20.

17 8. But the area where the subject accident occurred is to the west of this
18 segment of Signal Peak Road, and thus, Federal funds were not being used on the
19 segment of road on which the subject accident occurred. *First Fredenberg Decl.* ¶¶
20 15-16; 18-19.

21 9. That portion of Signal Peak Road where Plaintiff had his accident
22 (approximately milepost 20) on January 27, 2014 is within the Closed Area of the
23 Reservation. *First Fredenberg Decl.*, ¶¶ 13; 15; *Verschoor Decl.*, Ex. 1 (Littlebull
24 Report); *Verschoor Decl.*, Ex. 2 (Kingman Report).

25 **THE ACCIDENT**

26 10. Mr. Vera has been driving a logging truck for about 17 years. *Verschoor*
27 *Decl.*, Ex. 4 (Depo. Tr. J. Vera, p. 9, ll. 4-5).

1 11. Mr. Vera understood the risks of driving a logging truck in this area because
2 he had previously had an accident while driving a logging truck just five miles from
3 Signal Peak Road. *Id.* (Depo. Tr. J. Vera, p. 12, l. 16 to p. 13, l. 3).

4 12. Mr. Vera, at the time of the accident on January 17, 2014, was working for
5 Mistletoe Logging. *Id.* (Depo. Tr. J. Vera, p. 7, ll. 11-20; p. 9, ll. 8-9); *Verschoor*
6 *Decl.*, Ex. 1 (Littlebull Report).

7 13. On January 27, 2014, the date of the accident, there was some snow on
8 Signal Peak Road at Surprise Creek and some areas without snow. *Id.*, Ex. 1
9 (Littlebull Report); Ex. 2 (Kingman Report); Ex. 3 (Kingman photograph).

10 14. Mr. Vera confirmed, during his deposition, that his entry into the Closed
11 Area was through issuance of a permit. *Id.*, (Depo. Tr. J. Vera, p. 17, ll. 7-25).

12 15. Surprise Creek is about five (5) miles into the Closed Area of the Yakama
13 Indian Reservation. *Verschoor Decl.*, Ex. 5 (Timber Sale Inspection Report); Second
14 *Fredenberg Decl.*, ¶ 18 (ECF No. 34-1).

15 16. Mr. Vera had driven past Surprise Creek on the Signal Peak Road many
16 times. *Id.*, Ex. 4 (Depo. Tr. J. Vera, p. 18, ll. 19-24); *Id.*, Ex. 6 (Ans. To Inter. No.
17 13).

18 17. Mr. Vera explained that some days, he hauls more than one load of logs out
19 of the timber sale. *Id.* (Depo. Tr. p. 16, ll. 6-19).

20 18. Mr. Vera claimed that warning signs on the road were on the ground or in
21 disrepair, but knew what they looked like. *Id.* (Depo. Tr. p. 18, l. 25 to p. 19, l. 16).

22 19. He also admitted that he does not pay much attention to the warning signs
23 because he knows he has to slow down at that curve because he had driven it many
24 times. *Id.* (Depo. Tr. J. Vera, p. 21, l. 21 to p. 22, l. 12).

25 20. Mr. Vera also admitted that on January 27, 2014, he drove to the timber sale
26 on the Signal Peak Road from White Swan the morning of the accident. *Id.* (Depo. Tr.
27 P. 21, l. 21 to p. 22, l. 21).

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2019, I caused to be delivered via the method listed below the document to which this Certificate of Service is attached (plus any exhibits and/or attachments) to the following:

NAME & ADDRESS	Method of Delivery
Favian Valencia Sunlight Law, PLLC 402 E. Yakima Avenue, Suite 730 Yakima, WA 98902 sunlightlawpllc@gmail.com favian@sunlightlaw.com fatima@sunlightlaw.com	<input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Electronic Mail <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Other: _____

s/Rudy J. Verschoor
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